

Application No: 10/690,351
Filed: October 21, 2003

Atty. Docket: OP-11-1

REMARKS

Claims 10, and 13-20 are cancelled by this amendment. Claim 1, 11, 21 have been amended and new claim 25 has been added.

Regarding the Double Patenting Rejection, Applicant shall consider filing a terminal disclaimer in the event the claims are otherwise indicated as being patentable.

Regarding the Section 112 rejection, Applicant has cancelled claim 14. The Section 112 rejection is thus moot.

Rejections Under 35 U.S.C. §102:

According to the Office Action, claims 1-9 and 24 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5,470,335 to Du Toit (hereinafter referred to as "Du Toit").

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131 *citing* *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Amended Claim 1 now recites a claim limitation that is not found in Du Toit. Claim 1 now recites that the apparatus comprises two configurations: a narrow insertion configuration and a radially expanded locking configuration. Du Toit does not disclose this claim limitation. Du Toit does not disclose an apparatus that has a first and second configuration.

Based on the foregoing, Applicant requests reconsideration and withdrawal of the rejection of claim 1 and the claims that depend thereon.

The Office Action also rejects claims 11-12 and 21-23 under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5,501,695 to Anspach, Jr. et al. (hereinafter referred to as "Anspach").

Applicant has amended claim 11 to recite a claim limitation that is not disclosed in Anspach. In particular, claim 11 recites that the apparatus includes a proximal end that is adapted to be situated below the bone surface. This is markedly different than the devices shown in Anspach. Anspach shows a number of rivets and devices that include an enlarged proximal end to hold a plate to the bone. To remove this feature from the Anspach patent is contrary to its teachings and advantages.

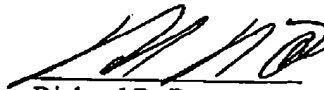
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Based on the foregoing, Applicant requests reconsideration and withdrawal of the rejection of claim 11 and the claims that depend thereon.

Applicant has made a sincere effort to respond to each of the issues raised in the Office Action. If the Examiner believes a telephone conference would expedite prosecution of this application, a telephone call to the undersigned attorney at the below listed number will be appreciated.

Respectfully submitted,



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2/7/06
Date

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